

**FILED**

DEC 12 2007

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 In re CORNERSTONE PROPANE ) Case No. C03-2522-MHP  
14 PARTNERS LP SECURITIES LITIGATION )  
15 ) ~~PROPOSED~~ FINAL ORDER  
16 ) AND JUDGMENT  
17 )

17 **~~PROPOSED~~ FINAL ORDER AND JUDGMENT**

18 On the 10th day of December, 2007, a hearing having been held before this Court to  
19 determine: (1) whether the terms and conditions of the Stipulation of Settlement dated as of  
20 September 19, 2006, and filed in the above-captioned action (the "Stipulation") are fair, reasonable  
21 and adequate for the Settlement of all claims asserted by the Class against the current and former  
22 Defendants in the Complaint, Cornerstone Propane Partners LP, Inc., Keith G. Baxter ("Baxter"),  
23 Ronald J. Goedde ("Goedde"), Charles J. Kittrell ("Kittrell"), Richard D. Nye ("Nye"), Merle D.  
24 Lewis ("Lewis"), Richard R. Hylland ("Hylland"), Daniel K. Newell ("Newell") and William J.  
25 Woods ("Woods") (collectively, the Defendants), now pending in this Court under the above  
26 caption (the "Action"), including the release of the Defendants and the other Released Persons, and  
27 should be approved; (2) whether judgment should be entered dismissing the Action on the merits  
28

1 and with prejudice in favor of the Defendants and as against all persons and entities who are  
2 members of the Class herein who have not requested exclusion therefrom; and (3) whether to  
3 approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds  
4 among the Members of the Class. The Court having considered all matters submitted to it at the  
5 hearing and otherwise; and it appearing that adequate notice of the hearing was provided in  
6 accordance with the Court's Preliminary Approval Order dated September 10, 2007 substantially in  
7 the form approved by the Court was mailed to all persons and entities reasonably identifiable, who  
8 purchased or otherwise acquired Cornerstone common units between July 29, 1998 and February  
9 11, 2003, inclusive (the "Class Period"), and who were damaged thereby, except those persons  
10 excluded from the definition of the Class, as shown by the transfer records of Cornerstone's transfer  
11 agent at the respective addresses set forth in such records, or as otherwise demonstrated to be  
12 excluded, and including those additional Members of the Class identified by nominee owners to the  
13 Claims Administrator as set forth in the Affidavit of a representative of The Garden City Group,  
14 Inc. and that a summary notice of the hearing substantially in the form approved by the Court was  
15 published in *The Wall Street Journal* pursuant to the specifications of the Court; and all capitalized  
16 terms used herein, unless otherwise defined herein, having the meanings as set forth and defined in  
17 the Stipulation:  
18

19  
20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 21  
22 1. The Court, for purposes of this Final Order and Judgment, adopts all defined terms  
23 as set forth in the Stipulation.
- 24 2. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiff,  
25 the Class Members and the Defendants.
- 26 3. The Court finds that the distribution of the Notice of Pendency and Proposed  
27 Settlement of Class Action (the "Notice"), Proof of Claim and Release form ("Proof of Claim"), and  
28

1 publication of the Summary Notice of Pendency and Proposed Settlement of Class Action  
2 (“Summary Notice”) as provided for in the Preliminary Approval Order constituted the best notice  
3 practicable under the circumstances to apprise all persons and entities within the definition of the  
4 Class of the pendency of the Action and their rights in it, the terms of the proposed Settlement of  
5 the Action, and afforded Class Members with an opportunity to present their objections, if any, to  
6 the Settlement. The Court finds that the provision of notice to Class Members fully met the  
7 requirements of Rule 23 of the Federal Rules of Civil Procedure, federal law, due process, the  
8 United States Constitution and any other applicable law.  
9

10 4. The Court finds that all persons and entities within the definition of the Class have  
11 been adequately provided with an opportunity to remove themselves from the Class by executing  
12 and returning a “request for exclusion” in conformance with the terms of the Notice.  
13

14 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court has  
15 previously certified a Class of all persons and entities who purchased or otherwise acquired  
16 Cornerstone common units between July 29, 1998 and February 11, 2003, inclusive, and who were  
17 damaged thereby. Excluded from the Class are (i) Defendants; (ii) members of the immediate  
18 family of each of the Defendants; (iii) Cornerstone and any subsidiary or affiliate of Cornerstone;  
19 (iv) the directors, officers, managing directors, principals and partners of Cornerstone; (v) any entity  
20 in which any excluded person has a controlling interest; and (vi) the legal representative, heirs,  
21 successors and assigns of any excluded person. Also excluded from the Class are those persons and  
22 entities (i) who both purchased or acquired and sold their Cornerstone common units before July 27,  
23 2001; or (ii) who timely and validly request exclusion from the Class.  
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1           6.       The Court approves the Settlement of the Action, as set forth in the Stipulation, each  
2 of the releases, and other terms, as fair, reasonable and adequate. The Parties are directed to  
3 perform in accordance with the terms set forth in the Stipulation.

4           7.       Upon the Effective Date, the Lead Plaintiff, the Class Members, and Lead Counsel  
5 and the successors and assigns of any of them shall be deemed to have, and by operation of this  
6 Final Order and Judgment shall have, fully, finally and forever released, relinquished and  
7 discharged the Released Persons from the Released Claims (whether or not such Class Member  
8 executes and delivers the Proof of Claim). "Released Persons" means each and all of the  
9 Defendants, Cornerstone, Northwestern Corporation, Northwestern Growth Corporation, and their  
10 respective past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers,  
11 controlling shareholders, attorneys, accountants, advisors, investment advisors, personal or legal  
12 representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns,  
13 spouses, heirs, related or affiliated entities, any entity in which Cornerstone or a Defendant has a  
14 controlling interest, any member of a Defendant's immediate family, or any trust of which any  
15 Defendant is the settler or which is for the benefit of any Defendant's family. "Released Claims"  
16 means any and all claims, debts, demands, rights or causes of action or liabilities, whether based on  
17 federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or  
18 contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-  
19 matured, whether class or individual in nature, including both known claims and Unknown Claims,  
20 (i) that have been asserted in this Action by the Class Members or any of them against any of the  
21 Released Persons, or (ii) that could have been asserted in the Action by the Class Members or any  
22 of them against any of the Released Persons which arise out of, are based upon, or relate to the  
23 allegations, transactions, facts, matters or occurrences, representations or omissions set forth, or  
24 referred to in the Action and are based upon the purchase or acquisition of Cornerstone common  
units during the Class Period.

25           8.       Upon the Effective Date, each of the Defendants and their respective counsel and the  
26 successors and assigns of any of them shall, and by operation of this Final Order and Judgment,  
27 fully, finally and forever release, relinquish and discharge the Released Defendants' Claims.  
28



1 “Released Defendants’ Claims” means any and all claims, rights or causes of action or liabilities  
 2 whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule  
 3 or regulation, including both known claims and Unknown Claims, that have been or could have  
 4 been asserted in the Action or any forum by the Defendants or any of them or the successors and  
 5 assigns of any of them against the Lead Plaintiff, any Class Member or their attorneys, which arise  
 6 out of or relate in any way to the institution, prosecution or settlement of the Action (except for  
 7 claims to enforce the Settlement).

8 9. Upon the Effective Date, each of the Defendants and the successors and assigns of  
 9 any of them shall, and by operation of this Final Order and Judgment, fully, finally and forever  
 10 release, relinquish and discharge the Released Defendants v. Defendants’ Claims. “Released  
 11 Defendants v. Defendants’ Claims” means any and all claims, rights or causes of action or liabilities  
 12 whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule  
 13 or regulation, including both known claims and Unknown Claims, that have been or could have  
 14 been asserted in the Action or any forum by the Defendant or any of them or the successors and  
 15 assigns of any of them against any of the other Defendants which arise out of or relate in any way to  
 16 the allegations, transactions, facts, matters, occurrences, representations or omissions in the Action  
 17 (except for claims to enforce the Settlement) and all claims for reimbursement, indemnification, or  
 18 contribution that arise out of or relate to the Released Claims.

19 10. “Unknown Claims” means any Released Claims which Lead Plaintiff or any Class  
 20 Member does not know or suspect to exist in his, her or its favor at the time of the release of the  
 21 Released Persons, and any Released Defendants’ Claims or Released Defendants v. Defendants’  
 22 Claims that any Defendant does not know or suspect to exist in his, her or its favor, which, if known  
 23 by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With  
 24 respect to any and all Released Claims, Released Defendants’ Claims, and Released Defendants v.  
 25 Defendants’ Claim, the Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiff  
 26 and Defendants expressly waive and relinquish, and the Class Members and Released Persons shall  
 27 be deemed to have, and by operation of the Final Order and Judgment shall have expressly waived  
 28 and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of §1542  
 of the California Civil Code, which provides:

1 A general release does not extend to claims which the creditor does not know or  
 2 suspect to exist in his favor at the time of executing the release, which if known by  
 him must have materially affected his settlement with the debtor.

3 Lead Plaintiff and Defendants expressly waive and the Class Members and the Released Persons  
 4 shall be deemed to, and upon the Effective Date and by operation of the Final Order and Judgment  
 5 shall, have waived any and all provisions, rights and benefits conferred by any law of the United  
 6 States or any state or territory of the United States, or principle of common law, which is similar,  
 7 comparable or equivalent to §1542 of the California Civil Code. The Parties acknowledge that the  
 8 foregoing waiver was bargained for and a key element of the Settlement of which this release is a  
 9 part.  
 10

11 11. ~~Except as to any individual claim of those persons and entities who have validly and~~  
 12 ~~timely requested exclusion from the Class, identified in Exhibit 1 hereto.~~ The Action and all claims  
 13 contained therein, as well as all of the Released Claims, are dismissed with prejudice as to the Lead  
 14 Plaintiff and the other Members of the Class, and as against the Released Persons. The Parties are  
 15 to bear their own costs, except as otherwise provided in the Stipulation. By operation of the Final  
 16 Order and Judgment and under the terms of the Stipulation and the releases therein, it is intended to  
 17 preclude, and shall preclude, Lead Plaintiff and all other Class Members from filing or pursuing any  
 18 Released Claims against the Released Persons under federal law or the law of any state. *n.l.*

19 12. Only those Class Members filing valid and timely Proofs of Claim shall be entitled  
 20 to participate in the Settlement and receive a distribution from the Settlement Fund. The Proofs of  
 21 Claim to be executed by the Class Members shall further release all Released Claims against the  
 22 Released Persons. All Class Members shall, as of the Effective Date, be bound by the releases set  
 23 forth herein whether or not they submit a valid and timely Proof of Claim.

24 13. Neither the Stipulation nor the Settlement contained therein, nor any act performed  
 25 or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may  
 26 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released  
 27 Claim, or of any wrongdoing or liability of the Defendants, the Released Persons or Lead Counsel;  
 28

(ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) shall be offered in evidence by any Party for any purpose except as provided in this ¶15. Released Persons may file the Stipulation and/or the Final Order and Judgment from this Action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Parties, their respective counsel or any other Member of the Class may file the Stipulation in any proceeding brought to enforce any of its terms or provisions.

14. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

15. The Court finds and concludes, pursuant to Section 27(c)(1) of the Securities Act of 1933 and Section 21D(c)(1) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. §§ 77z-1(c)(1), 78u-4(c)(1), that Lead Plaintiff, Lead Counsel, Defendants and Defendants' Counsel have complied with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading or dispositive motion.

16. In the event that the Settlement fails to become effective in accordance with its terms, or if this Final Order and Judgment is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if any party elects to terminate the Settlement), this Final Order and Judgment (except this paragraph) shall be null and void, the Settlement (except ¶8.6 of the Stipulation) shall be deemed terminated, and the Parties shall return to their pre-settlement positions as provided for in the Settlement, except that (1) any modifications, reversal, or vacation

1 of the award of attorneys' fees and expenses to Lead Counsel on appeal or in any further motions in  
 2 this Court shall in no way disturb or affect any other part of this Final Order and Judgment,  
 3 including, but not limited to ¶¶7-14 which parts shall be considered separate from the award of  
 4 attorneys' fees; (2) any further proceedings, whether in this Court or on appeal, related to the Plan  
 5 of Allocation shall in no way disturb or affect any other part of this Final Order and Judgment,  
 6 including, but not limited to ¶¶7-14 which parts shall be considered separate from the Plan of  
 7 Allocation; and (3) any modifications, reversal, or vacation of an award to Lead Plaintiff on appeal  
 8 or in any further motions in this Court shall in no way disturb or affect any other part of this Final  
 9 Order and Judgment, including, but not limited to ¶¶7-14 which parts shall be considered separate  
 10 from the award of attorneys' fees.  
 11

12 17. Without affecting the finality of this Final Order and Judgment in any way, the Court  
 13 reserves exclusive and continuing jurisdiction over the Action, Lead Plaintiff, the Class and the  
 14 Released Persons for the purposes of: (1) supervising the implementation, enforcement,  
 15 construction, and interpretation of the Stipulation, the Plan of Allocation, and this Final Order and  
 16 Judgment; (2) hearing and determining any application by Lead Counsel for an award of attorneys'  
 17 fees, costs and expenses; (3) hearing and determining the application for award to Lead Plaintiff for  
 18 the reimbursement of reasonable time and expenses; and (4) supervising the distribution of the  
 19 Settlement Fund.  
 20

21 Dated: December 11, 2007

22   
 23 THE HONORABLE MARILYN HALL PATEL  
 24 UNITED STATES DISTRICT JUDGE

25 n.1 As to the class member identified by and  
 26 submitting Exhibit 1, the court finds that the  
 27 attempted inclusion is invalid in that it fails  
 28 to comply with the requirements of paragraph 2/  
 of the Preliminary Approval Order. Therefore, the  
 inclusion is rejected.



# **Exhibit**

# **1**

THE NEW YORK PUBLIC LIBRARY

**THE UNIVERSITY OF CHICAGO**

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October, 2007

Gentlemen,

Constitutional Property Partners  
Securities Litigation

Please exclude from the settlement:

Mark Norman  
10 Sanderson Road  
Lexington, MA 02420

I have retained my right to proceed in any way I  
see fit by this notice to you.

You have not represented my interests, or others you have  
served "in the class".

You do not have my support.

Please refrain from any contact except by U.S. mail.

Thank you,

L. Mark Norman

RECEIVED  
OCT 26 2007

THE GARDEN CITY GROUP, INC.